

ERRORISM

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Office of Legislative Liaison

Routing Slip

TO:	ACTION	INFO
1. D/OLL		x
2. DD/OLL		x
3. Admin Officer		
4. Liaison		x
5. Legislation	x	
6. [Redacted]		x
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SUSPENSE 30 Sept 85
Date

Action Officer: [Redacted]

Remarks: *Action completed. No comment provided to OMB per DMP on 9/27/85*

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE LIAISON
85-2782

September 20, 1985

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of Justice
Department of Defense
National Security Council
Central Intelligence Agency
Department of the Treasury

SUBJECT: Department of State proposed report on S. 1508, the
"Terrorist Death Penalty Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than September 30, 1985.

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: Russ Neely
Karen Wilson
Adrian Curtis



Washington, D.C. 20520

Dear Mr. Chairman:

Thank you for your letter of July 30 requesting our views on S. 1508, the "Terrorist Death Penalty Act of 1985".

The Department of State strongly supports the proposed legislation in principle. We would of course defer to the views of the Department of Justice on the procedural aspects of the bill.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With best wishes,

Sincerely,

William L. Ball, III
Assistant Secretary
Legislative and Intergovernmental Affairs

The Honorable
Strom Thurmond,
Chairman,
Committee on the Judiciary,
United States Senate.

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July 26, 1985

any article described in item 475.05, 475.10, 475.25, 475.30, 475.35, 475.65, upon proof that—

"(i) such article was used—

"(A) as heating fuel, or

"(B) in the production of heating fuel, or

"(ii) such article—

"(A) is necessary and inherent to the manufacturing process for products destined for export.

"(b) Allowance of a refund under this headnote shall be subject to compliance with such rules and regulations as the Secretary of the Treasury may prescribe, which may include, but not be limited to—

"(i) fixing of a time limit which claims for refund under any of the provisions of this headnote shall be filed and completed, and

"(ii) the designation of the person to whom any refund shall be made."

(f) The amendments made by this section shall apply to articles entered, or withdrawn from warehouse, for consumption after the date that is 30 days after the date of enactment of this Act.

SEC. 2. USE OF REVENUES FROM INCREASED TARIFFS ON PETROLEUM.

(a)(1) All revenues received into the general fund of the Treasury of the United States that are attributable to the amendments made by section 1 shall be allocated, for accounting purposes, into a special account to be known as the Petroleum Tariff Account.

(2) The Secretary of the Treasury is authorized and directed to pay out of the Petroleum Tariff Account any refunds which are allowed under headnote 6 of part 10 of schedule 4 of the Tariff Schedules of the United States.

(b) It is the sense of the Congress that any funds in the Petroleum Tariff Account that are not needed to make the payments required under subsection (a)(2) should be used to reduce the deficit in the budget of the Federal Government.◊

By Mr. SPECTER:

S. 1508. A bill to amend title 18, United States Code, to authorize the death penalty for first-degree terrorist murder, and for other purposes; to the Committee on the Judiciary.

TERRORIST DEATH PENALTY ACT

Mr. SPECTER. Mr. President, I am today introducing legislation to provide that terrorists who murder U.S. citizens during a hostage-taking would be subject to the death penalty.

This bill incorporates the carefully drafted death penalty procedures and standards which were adopted by the full Senate in February 1984, in S. 1765—no House version of the bill passed. The consensus at that time was that the procedures and standards in S. 1765—and now set forth in my bill—fully satisfied the constitutional requirements prescribed by the U.S. Supreme Court in its consideration of the death penalty.

I strongly believe that international terrorists who take an American hostage and then murder that person deserve the death penalty. Too often in the recent past, our approach to terrorism has been soft. In the wake of each new terrorist act, we engage in national handwringing and tough talk, but take little or no serious action. Terrorists are criminals, and should be dealt with as criminals. The same concepts of likely apprehension and swift, certain, and severe punishment that

underlie our criminal justice system can and should have effective application to international criminals as well.

Punishment and deterrence can work in the international field, however, only if we enact the necessary legislation. Current law provides for the death penalty where a death results from the seizure of an aircraft (49 U.S.C. sec. 1472(i)). It is not clear that the murderers of Navy diver Robert Stethem in the recent TWA hijacking would be subject to that provision, however, because the killing occurred after the hijackers had gained control over TWA flight 847, not as a direct result of the hijacking. The statute under which the TWA hijackers clearly can be prosecuted in 18 U.S.C. 1203, which prohibits hostage taking. The hostage taking statute, however, does not provide for the death penalty.

The legislation I introduce today would close this statutory gap by amending the existing hostage-taking statute to permit application of the death penalty upon a conviction for first degree murder. While it of course cannot have retroactive application to the murderers of Robert Stethem, it would serve as a deterrent to—or a well-deserved punishment for—any similar atrocities in the future.

I recently met with the Byron family of Harrisburg, PA, who were passengers on TWA flight 847. I discussed with Leo and Carolyn Byron and their 13-year-old daughter, Pamela, their horrible experiences. They described the brutal beating of Robert Stethem and the abuse they themselves suffered at the hands of the terrorist hijackers.

If we learn nothing else from our painful experiences in Lebanon, we should learn that the one thing terrorists respond to is power. We know we must act swiftly and strongly in response to threats to U.S. nationals. Inclusion of the death penalty in the existing statutes relating to murder of U.S. nationals by terrorists is, in my view, essential if we are to make a strong, effective, and complete response to such acts of violence.

Earlier in this Congress, I introduced S. 1373 and S. 1429, modified versions of S. 3018, which I first introduced in the 98th Congress. S. 1373 and S. 1429 would expand U.S. law by making it a crime for anyone in any country to assault or kill any U.S. national as part of an act of international terrorism. It is my hope that those bills will generate serious discussion about how best to combat international terrorism. I would favor amendment of those earlier bills so that they also would provide for the death penalty in the event of egregious terrorist murders of U.S. citizens. I did not provide for the death penalty in S. 1373 or S. 1429 in order to expedite the passage of these bills. When these bills are considered on the floor, I intend to add the death penalty provision, but if the death penalty provision cannot be passed or if it is file bracketed then we should at

least enact the subcommittee provisions of S. 1373 and S. 1429.

I emphasize, however, that the bill I introduce today in no way changes the elements of a violation of the existing statute relating to hostage taking. Rather, it simply makes the death penalty available for violations of that statute, just as Congress already has provided for the availability of the death penalty in the hijacking statute (42 U.S.C. sec. 1472(i)).

I ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Terrorist Death Penalty Act of 1985."

SEC. 2. (a) Part I of title 18, United States Code, is amended by inserting after chapter 113 the following:

CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER

"Sec.

"2321A. Death Penalty for Terrorist Murder.

"Section 2321A. Death Penalty for terrorist murder.

"(a) SENTENCE OF DEATH.—A defendant who has been found guilty of first degree murder under section 1203(a), shall be sentenced to death if, after consideration of the factors set forth in paragraph (1) of this subsection in the course of a hearing held pursuant to this subsection, it is determined that imposition of a sentence of death is justified.

"(1) FACTORS TO BE CONSIDERED IN DETERMINING WHETHER A SENTENCE OF DEATH IS JUSTIFIED

"(A) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(i) the defendant was less than eighteen years of age at the time of the offense;

"(ii) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(iii) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(iv) the defendant was an accomplice whose participation in the offense was relatively minor.

The jury, or if there is no jury, the court, may consider whether any other mitigating factor exists.

"(B) AGGRAVATING FACTORS.—In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(i) the defendant has previously been convicted of another offense for which either a sentence of life imprisonment or death was authorized by statute; or

"(ii) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

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The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(2) SPECIAL HEARING TO DETERMINE WHETHER A SENTENCE OF DEATH IS JUSTIFIED

"(A) NOTICE BY THE GOVERNMENT.—If the attorney for the Government believes that the circumstances of the offense are such that a sentence of death is justified under this section, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(i) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(ii) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(B) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(i) before the jury that determined the defendant's guilt;

"(ii) before a jury impaneled for the purpose of the hearing if—
the defendant was convicted upon a plea of guilty;

the defendant was convicted after a trial before the court sitting without a jury;

the jury that determined the defendant's guilt was discharged for good cause; or

after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(iii) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (ii) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(C) PROOF OF MITIGATING AND AGGRAVATING FACTORS. At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity

to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(D) RETURN OF SPECIAL FINDINGS. The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor if a majority of the jury finds the existence of such a specific factor.

"(E) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If an aggravating factor is found to exist; the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(F) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (E), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury upon return of a finding under subsection (E) shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"(3) IMPOSITION OF A SENTENCE OF DEATH

"Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding that a sentence of death is not justified, the court shall impose any sentence other than death that is authorized by law, if the maximum term of imprisonment for the offense is life imprisonment the court may impose a sentence of life imprisonment without parole.

"(4) REVIEW OF A SENTENCE OF DEATH

"(A) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(B) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(i) The evidence submitted during the trial;

"(ii) the information submitted during the sentencing hearing.

"(iii) the procedures employed in the sentencing hearing; and

"(iv) the special findings returned.

"(C) DECISION AND DISPOSITION.—

"(i) If the court of appeals determines that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and the information supports the special finding of the existence of an aggravating factor required to be considered, it shall affirm the sentence.

"(ii) In any other case, the court of appeals shall remand the case for reconsideration.

"(iii) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(5) IMPLEMENTATION OF A SENTENCE OF DEATH

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(6) USE OF STATE FACILITIES

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

(b) The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for Chapter 113, the following:

CHAPTER 113A—DEATH PENALTY FOR TERRORIST MURDER

"113A—Death Penalty for Terrorist Murder..... 2321A"

(c) Section 1203(a) of title 18, United States Code, is amended as follows: at the end of the paragraph strike "." and add ".", except that, if death results, any such person who is found guilty of first degree murder shall be sentenced as provided in section 2321A of this title."

By Mr. CRANSTON (for himself and Mr. COHEN):

S. 1509. A bill to amend chapter 30 of title 38, United States Code, to provide for educational assistance under the All-Volunteer Force Educational Assistance Program for pursuit of a program of education by correspondence; to the Committee on Veterans' Affairs.

NEW "GI BILL" BENEFITS FOR HOME STUDY COURSE

Mr. CRANSTON. Mr. President, I am today introducing, together with Senator COHEN, S. 1509, a bill which